

REMARKS

Reconsideration of the present application, as amended, is respectfully requested. Claims 2-55, and 58 of the present application are currently pending. Claims 56-57 have been cancelled, as having been drawn to a non-elected invention. Claim 1 has been canceled, and claim 58 is new. Claims 2-4 have been amended to change their dependencies. Claims 7, 9, 16, 19, 20, 22, 26, 27, 33, 43, and 53 have been amended to better define the invention. Support for the amendment is found in the specifications, at least in figures 1, 2, and 4, and on page 8, lines 6-13.

Objection to Multiple Rejections of the Same Claims

Independent claim 1, was rejected twice under a 102 rejection by two different references, and then rejected a third time under a 103 rejection with a third primary reference. All the other independent claims are rejected twice under a 103 rejection by two different primary references. Similarly, all the dependent claims are rejected at least twice, and even three times, by different references.

Under MPEP 706.02 (I), only the "best available art" is to be used in making a rejection. Similarly, under 37 CFR 1.104, "in rejecting claims" only the "best available art" is to be used. Further, PTO's policy is against making multiple rejections of the same claims, since it is a waste of resources for both Applicant and PTO, and can lead to abuses. If the Examiner has a sound rejection, then there clearly is no legitimate reason for making additional rejections. However, if the Examiner's rejection is weak, the Examiner should not try to employ additional rejections, with the hope of sustaining one of the rejections. Such a strategy is improper and violates MPEP 706.02 (I) and 37

CFR 1.104. Applicant requests that the Examiner refrain from multiple rejections and limit rejections to **only** the “best available art.”

Claim Rejections - 35 USC § 112

Claims 7-18, 20, and 22-32 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant has amended the claims to better define the invention, rendering the rejection moot. The claims currently read “wherein the pull agent subsequent to receiving the presence and location information, provides the presence or location information.” In light of the above comments and the amendment, applicant asserts that the Examiner’s rejection should be withdrawn.

Applicant, accordingly, respectfully requests withdrawal of the rejections of claims 7-18, 20, and 22-32 under 35 U.S.C. 112, second paragraph.

35 U.S.C. § 102 Rejections

Claims 1-3 were rejected under 35 U.S.C. 102(e) as being anticipated by US Patent 6,650,891 to Wierzbicki et al. (hereinafter “Wierzbicki”). Claim 1 has been canceled, and claims 2-3 have been amended to depend on claim 58. In light of the amendment, the Examiner’s rejections have become moot. Nonetheless, the following remarks regarding the Examiner’s rejections and the amended claims may be helpful to expedite prosecution.

Applicant’s invention relates to a server-based network presence and location (NPL) agent comprising: a pull agent and/or a push agent, to acquire presence and location information about a plurality of mobile devices operating on a wireless network

from an entity on the wireless network which is not a mobile device or an element of a mobile device; and an interface to provide the acquired presence and location information to remote applications, other than a mobile device or element of a mobile device, which use said information on a computer network. The NPL agent, whether a pull or push agent, acts as a separate entity that actively seeks out information, processes the information, and publishes the information, as desired. Furthermore, the NPL agent does not extract information from the mobile devices, nor from an element of the mobile devices. Instead, the information is extracted from an entity on the wireless network, other than the mobile devices. This permits the mobile devices to be simpler and have fewer demands placed upon them. Instead, other entities on the wireless network would be designed for and better capable of assuming such demands. Furthermore, the information is provided to a remote application, which uses the information on a computer network. Since the remote application is not a mobile device, the mobile device can be simpler and have fewer demands placed upon the device, permitting its limited resources to be directed to user functions.

In contrast, Wierzbicki discloses the collection of presence information at the request of a mobile device, i.e. in order to determine if requester's friends are also connected. The entity, which the Examiner considers to be the "NPL agent", is unclear in the Examiner's rejection. Applicant requests the Examiner to separately and specifically identify each and every element and limitation in the specification. The Examiner's rejection merely cites a large section of the reference, containing many elements, and asserts that somehow they read on the claims. It is unclear which

element or limitation in the reference reads on which element or limitation in the claims. Clarification is requested.

Wierzbitzki discloses many components on the wireless network that perform a variety of functions and receive and transfer information to other components. The request for information is for only one very specific application. Eventually, the specific request for information from the mobile device finds its way to the requesting mobile device, but Wierzbitzki fails to disclose an entity acting as an agent. The specific routing of specific information between devices is not the same as an agent entity that orchestrates the transfer of information between devices to perform a variety of functions for a variety of applications. An agent entity is flexible and can easily perform a variety of functions within a system, to produce a variety of different outputs. In contrast, a mere component of a system, such as in Wierzbitzki, lacks flexibility and cannot perform a variety of functions, and produces only a very limited output, and thus, Wierzbitzki fails to contain an NPL agent.

In addition, Wierzbitzki fails to disclose or suggest an interface to provide information to a remote application, other than a mobile device or element of a mobile device, which use the information on a computer network. In fact, Wierzbitzki teaches away from the claimed invention, by providing information to the remote application, which is an element of a mobile device. Furthermore, the information provided to the mobile device is not used on a computer network, instead the information terminates at the mobile device making the request.

Wierzbitzki fails to teach every limitation in independent claim 58, and thus applicant asserts that the claim is allowable over Wierzbitzki. Applicant, accordingly,

respectfully requests withdrawal of the rejections of claims 1-3 under 35 U.S.C. 102(e) as being anticipated Wierzbitzki.

Claims 1-3 were rejected under 35 U.S.C. 102(e) as being anticipated by US Patent 6,741,853 to Jiang et al. (hereinafter "Jiang"). Claim 1 has been canceled, and claims 2-3 have been amended to depend on claim 58. In light of the amendment, the Examiner's rejections have become moot. Nonetheless, the following remarks regarding the Examiner's rejections and the amended claims may be helpful to expedite prosecution.

In light of the remarks made above, Jiang also fails to disclose or suggest all the elements and limitations of independent claim 58. Jiang discloses the use of push and pull agents for delivering data and messages to mobile users or for requesting messages, respectively. Jiang also discloses the use of location-based services for the users of mobile devices. However, Jiang fails to disclose or suggest the use of any NPL agents, to specifically obtain and provide presence and location information. Jiang's agents provide the users with many other kinds of information, other than presence and location information. Jiang is silent regarding the use an NPL agent for the location-based services. In addition, Jiang teaches away from the claimed invention, because Jiang discloses providing all of the information to the users, and this information is not used on a computer network. The user appears not to further process this information and provide it to any other entities.

Jiang fails to teach every limitation in independent claim 58, and thus applicant asserts that the claim is allowable over Jiang. Applicant, accordingly, respectfully

requests withdrawal of the rejections of claims 1-3 under 35 U.S.C. 102(e) as being anticipated Jiang.

35 U.S.C. § 103 Rejections

Claims 4-6 were rejected under 35 U.S.C. 103(a) as being unpatentable over Jiang in view of US Patent 6,421,707 to Miller et al. (hereinafter "Miller"). Claim 1 has been canceled, and claim 4 has been amended to depend on claim 58. In light of the amendment, the Examiner's rejections have become moot. Nonetheless, the following remarks regarding the Examiner's rejections and the amended claims may be helpful to expedite prosecution.

Miller is introduced to provide the limitation of the use of an SMPP. In light of the above remarks, Miller fails to remedy the deficiencies of Jiang, with regard to independent claim 58. Miller also fails to disclose or suggest the acquisition and distribution of presence and location information, particularly by an agent. Further, Miller also teaches away from the claimed invention, by providing information to the end users of mobile devices, and wherein the end users do not further provided the information to other entities.

Jiang and Miller, whether together or separately, fail to teach every limitation in independent claim 58, and thus applicant asserts that the claim is allowable over Jiang and Miller. In view of the above remarks, a specific discussion of the dependent claims is considered to be unnecessary. Applicant, accordingly, respectfully requests withdrawal of the rejections of claims 4-6 under 35 U.S.C. 103(a) as being unpatentable over Jiang in view of Miller.

Claims 4-11, 15-16, 19-20, 22-27, 29, 32-36, 38-41, 43-46, 48-51, and 53-55 were rejected under 35 U.S.C. 103(a) as being unpatentable over Wierzbitzki in view of Jiang and further in view of Miller. Claim 1 has been canceled, and claims 2-3 have been amended to depend on claim 58. Independent claims 7, 16, 19, 22, 33, 43, and 53, have been amended to better define the invention. In light of the amendment, the Examiner's rejections have become moot. Nonetheless, the following remarks regarding the Examiner's rejections and the amended claims may be helpful to expedite prosecution.

Independent claims 7 and 16, comprise both a pull and push agent to procure and process presence of location information from mobile devices operating on a wireless network. The pull agent receives a request from a remote application, other than a mobile device, for presence or location information about a mobile device operating on a wireless network, and to send a corresponding request for the presence or location information to a Short Message Service Center (SMSC), such that the SMSC responds by querying a Home Location Register (HLR) of the wireless network to obtain the requested presence or location information, wherein the SMSC responds by providing the presence or location information to the pull agent, and wherein the pull agent subsequent to receiving the presence and location information, provides the presence or location information to the remote application. The push agent receives location or presence information about a mobile device operating on the wireless network from the HLR, wherein the presence or location information received by the push agent is not in response to a specific request for said information, and wherein the push agent subsequent to receiving the presence and location information, provides the

presence or location information to a remote application, other than a mobile device or an element of a mobile device.

In contrast, Wierzbitzki discloses the collection of presence information at the request of a mobile device and not a remote application. Further, the Examiner's rejection correctly recognizes that Wierzbitzki fails to disclose either a pull or push agent. The Examiner's rejection attempts to remedy this deficiency with Jiang, which is asserted to disclose a pull agent. Examiner asserts that it would be obvious to modify Wierzbitzki with Jiang to include both a pull and push agent to pull and push information to a computer. Such an assertion is highly speculative and fails to read on the claims. The pull agent is required to send a request to the SMSC, such that the SMSC responds by querying a HLR of the wireless network. Figure 1 of Wierzbitzki actually teaches away from the claimed invention by disclosing **no direct link** between the SMSC and the HLR, thus preventing the SMSC from making a query to the HLR. Wierzbitzki fails to disclose or suggest a pull agent that sends a request to the SMSC, nor does Wierzbitzki disclose or suggest that such a request would initiate the SMSC to query the HLR. Jiang fails to remedy these deficiencies. It appears that the Examiner has merely obtained references containing elements in the claims and asserted that it would be obvious to combine the references and the elements in the manner claimed. This appears to be hindsight reasoning. There is no suggestion in the references to have a pull agent make a request to the SMSC, which then queries the HLR. A pull agent that merely pulls information from a computer does not read on the claims.

Similarly, Wierzbitzki fails to disclose or suggest a push agent that receives presence and location information from the HLR, which is not in response to a specific

request, and then the push agent provides the information to the remote application. The Examiner's rejection attempts to remedy these deficiencies with Jiang, by asserting that it would be obvious to provide a push agent to push information to a computer. Such an assertion fails to read on the claims. There is no suggestion in the prior art of record to combine these elements as claimed. Again hindsight reasoning appears to be used in the rejection. It appears that the Examiner's obviousness rejection is based on Jiang's disclosure of XML and HTTP, as a motivation to combine. These elements, some of which are contained in the dependent claims, cannot be construed to be the sole basis for obviousness for the entire independent claim. In an obviousness rejection, each claim must be taken as a whole. Each claim, with all its elements and limitations, must be disclosed or suggested, as a whole, when combining references.

Miller is introduced to provide the limitation of the use of an SMPP. In light of the above remarks, Miller also fails to remedy the deficiencies of Wierzbitzki and Jiang. In light of the above remarks, none of the cited references, either singly or in combination, contain at least these elements. Further, as asserted above, all three references, Wierzbitzki, Jiang, and Miller, all teach away from the claimed invention.

Independent claim 22 comprises a pull agent to procure and process presence of location information from mobile devices operating on a wireless network. The presence and location information is then provided to a remote application, other than a mobile device or element of a mobile device. In light of the above remarks, none of the cited references, either singly or in combination, contain at least these elements. Further, as asserted above, all three references, Wierzbitzki, Jiang, and Miller, all teach away from the claimed invention.

Independent claim 19 comprises a processing system to procure and process presence of location information from mobile devices operating on a wireless network. The presence and location information is then provided to a remote application, other than a mobile device or element of a mobile device. In light of the above remarks, none of the cited references, either singly or in combination, contain at least these elements. Further, as asserted above, all three references, Wierzbitzki, Jiang, and Miller, all teach away from the claimed invention.

Independent claim 33 comprises an apparatus to procure and process presence of location information from mobile devices operating on a wireless network. The presence and location information is then provided to a remote application, other than a mobile device or element of a mobile device. In light of the above remarks, none of the cited references, either singly or in combination, contain at least these elements. Further, as asserted above, all three references, Wierzbitzki, Jiang, and Miller, all teach away from the claimed invention.

Independent claims 43 and 53 comprise a method to procure and process presence of location information from mobile devices operating on a wireless network. The presence and location information is then provided to a remote application, other than a mobile device or element of a mobile device. In light of the above remarks, none of the cited references, either singly or in combination, contain at least these elements. Further, as asserted above, all three references, Wierzbitzki, Jiang, and Miller, all teach away from the claimed invention.

In view of the above remarks, a specific discussion of the dependent claims is considered to be unnecessary. Therefore, Applicants' silence regarding any dependent

claim is not to be interpreted as agreement with, or acquiescence to, the rejection of such claim or as waiving any argument regarding that claim.

Applicant, accordingly, respectfully requests withdrawal of the rejections of claims 4-11, 15-16, 19-20, 22-27, 29, 32-36, 38-41, 43-46, 48-51, and 53-55 under 35 U.S.C. 103(a) as being unpatentable over Wierzbitzki in view of Jiang and further in view of Miller.

Claims 12, 18, 28, 42 and 52, were rejected under 35 U.S.C. 103(a) as being unpatentable over Wierzbitzki in view of Jiang in further view of Miller in further view of Official Notice. In light of the amendment, the Examiner's rejections have become moot. Nonetheless, the following remarks regarding the Examiner's rejections and the amended claims may be helpful to expedite prosecution.

Applicant challenges Examiner's taking of Official Notice, that 'it would be obvious to modify Wierzbitzki, Jiang, and Miller, to use J-STD-025'. Applicant disagrees that it would be obvious to modify the prior art of record with J-STD-025. Merely because a standard is allegedly well known in the area of electronic surveillance, it is highly speculative to suggest that the use of such a standard in the area of presence and location information of mobile devices would be "capable of such instant and unquestionable demonstration as to defy dispute", MPEP 2177.03. Applicant requests that Examiner provide the prior art which discloses that it would be obvious to modify the prior art of record with J-STD-025.

In view of the above remarks, a specific discussion of the dependent claims is considered to be unnecessary. Therefore, Applicants' silence regarding any dependent

claim is not to be interpreted as agreement with, or acquiescence to, the rejection of such claim or as waiving any argument regarding that claim.

Applicant, accordingly, respectfully requests withdrawal of the rejections of claims 12, 18, 28, 42 and 52, under 35 U.S.C. 103(a) as being unpatentable over Wierzbitzki in view of Jiang in further view of Miller in further view of Official Notice.

Claims 13, 14, 17, 21, 30, 31, 37, and 47 were rejected under 35 U.S.C. 103(a) as being unpatentable over Wierzbitzki in view of Jiang in further view of Miller in further view of US Patent 6,771,639 to Holden (hereinafter "Holden"). In light of the amendment, the Examiner's rejections have become moot. Nonetheless, the following remarks regarding the Examiner's rejections and the amended claims may be helpful to expedite prosecution.

Holden is introduced to disclose the use of SIP to receive information, but Holden fails to disclose the use of SIP for receiving presence and location information of mobile devices. Holden discloses a system for obtaining announcement information and for interactive call sessions. Holden does not disclose any wireless components in its system, much less presence and location information of mobile devices. Examiner appears to be using hindsight to merely combine dissociated elements from references, without regard to the actual teachings of each reference.

In light of the above remarks, Holden fails to remedy the deficiencies of Wierzbitzki, Jiang, and Miller, with regard to the independent claims. Holden fails to disclose or suggest the acquisition and distribution of presence and location information, particularly by an agent. Holden also appears teaches away from the claimed invention, by providing information to the users, and wherein the information used is terminated at

the user level. Further, it appears that Holden, whether singly or in combination with the prior art of record, fails to disclose all the limitations of the independent claims.

In view of the above remarks, a specific discussion of the dependent claims is considered to be unnecessary. Therefore, Applicants' silence regarding any dependent claim is not to be interpreted as agreement with, or acquiescence to, the rejection of such claim or as waiving any argument regarding that claim.

Applicant, accordingly, respectfully requests withdrawal of the rejections of claims 13, 14, 17, 21, 30, 31, 37, and 47 under 35 U.S.C. 103(a) as being unpatentable over Wierzbicki in view of Jiang in further view of Miller in further view of Holden.

Claims 1-11, 16, 19-20, 22-27, 29, 33-36, 39-41, 43-46, 49-51, 53-55, 15 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,148,197 to Bridges et al. (hereinafter "Bridges") in view of Jiang in further view of Miller. Claim 1 has been canceled, and claims 2-3 have been amended to depend on claim 58. Independent claims 7, 16, 19, 22, 33, 43, and 53, have been amended to better define the invention. In light of the amendment, the Examiner's rejections have become moot. Nonetheless, the following remarks regarding the Examiner's rejections and the amended claims may be helpful to expedite prosecution.

In contrast applicant's invention, as described in the above comments, Bridges discloses an apparatus for selecting a preferred wireless carrier from a plurality of wireless carriers. The data obtained relates to charges and preferences related to wireless carriers. Regarding independent claim 58, the presence and location information obtained and processed is **not** related to a **plurality** of mobile devices, but to a single mobile device. Further, as Examiner has properly identified, Bridges fails to

disclose the use of push or pull agents. Examiner attempts to overcome this deficiency in Bridges by combining Jiang with Bridges. As discussed above, Jiang teaches away from the invention because Jiang provides information to the mobile users and not to a remote application. Further, Examiner's motivation statement is defective because, in part, it also teaches away from the claimed invention. The claimed invention requires providing presence or location information to remote applications, other than mobile users. Also Jiang discloses providing presence and location information to mobile users, whereas Bridges provides pricing and preference information regarding carriers to the users.

It is not clear from the rejection, what the Examiner considers to be the remote application and the interface. Applicant requests specific identification of the claim elements and limitations in the references cited. It appears that Bridges does **not** provide **presence or location** information to a remote application, but instead processes the information and then provides **other** information, such as pricing and preferences of carriers, to the user's mobile device.

Miller is introduced to provide the limitation of the use of an SMPP. In light of the above remarks, Miller fails to remedy the deficiencies of Bridges and Jiang. Miller also fails to disclose or suggest the acquisition and distribution of presence and location information, particularly by an agent. Further, Miller also teaches away from the claimed invention, by providing information to the users, and wherein the information used is terminated at the user level. The combination of Bridges, Jiang, and Miller appears to be a result of hindsight reasoning and a mere compilation of elements without any clear suggestion to combine, absent the disclosure by applicant.

With regard to independent claims 7, 16, and 22, the combination of Bridges, Jiang, and Miller fail to disclose or suggest the claimed inventions, specifically the use of push or pull agents, and the providing of presence and location information to a remote application, other than a mobile device.

With regard to claims 19, 33, 43, and 53, the cited references are not combinable, as indicated above, and thus fail to provide presence and location information to a remote application, other than a mobile device. Further, the Examiner's rejection combines Jiang with Bridges to introduce the element of using XML and HTTP, so as "to provide a protocol to transfer information to a web browser." Applicant asserts that the references are not combinable because the web browser is used to provide presence and location information to mobile devices, thus teaching away from the claimed invention.

In view of the above remarks, a specific discussion of the dependent claims is considered to be unnecessary. Therefore, Applicants' silence regarding any dependent claim is not to be interpreted as agreement with, or acquiescence to, the rejection of such claim or as waiving any argument regarding that claim.

Applicant, accordingly, respectfully requests withdrawal of the rejections of claims 1-11, 16, 19-20, 22-27, 29, 33-36, 39-41, 43-46, 49-51, 53-55, 15 and 32 under 35 U.S.C. 103(a) as being unpatentable over Bridges in view of Jiang in further view of Miller.

Claims 12, 18, 28, 42, 52, 38, and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,148,197 to Bridges et al. (hereinafter "Bridges") in view of Jiang in further view of Miller, in further view of Official Notice. In light of the

amendment, the Examiner's rejections have become moot. Nonetheless, the following remarks regarding the Examiner's rejections and the amended claims may be helpful to expedite prosecution.

In view of the above remarks, a specific discussion of the dependent claims is considered to be unnecessary. Therefore, Applicants' silence regarding any dependent claim is not to be interpreted as agreement with, or acquiescence to, the rejection of such claim or as waiving any argument regarding that claim.

Applicant challenges Examiner's taking of Official Notice, that 'it would be obvious to modify Wierzbicki, Jiang, and Miller, to use J-STD-025'. Applicant disagrees that it would be obvious to modify the prior art of record with J-STD-025. Merely because a standard is allegedly well known in the area of electronic surveillance, it is highly speculative to suggest that the use of such a standard in the area of presence and location information of mobile devices would be "capable of such instant and unquestionable demonstration as to defy dispute", MPEP 2177.03. Applicant requests that Examiner provide the prior art which discloses that it would be obvious to modify the prior art of record with J-STD-025.

Applicant challenges Examiner's taking of Official Notice, that 'it would be obvious to modify Wierzbicki, Jiang, and Miller, to use GPRS to receive information in order to support web browsing and other services. Examiner's motivation is defective because it teaches away from the claimed inventions, which require the remote application not be a mobile device. Applicant requests that Examiner provide a reference, which discloses a method of providing an application with presence and location information about a mobile device, which receives presence or location

information from a GPRS server. Official Notice requires that the limitation be “capable of such instant and unquestionable demonstration as to defy dispute”, MPEP 2177.03.

Applicant, accordingly, respectfully requests withdrawal of the rejections of claims 12, 18, 28, 42, 52, 38, and 48 under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,148,197 to Bridges et al. (hereinafter “Bridges”) in view of Jiang in further view of Miller, in further view of Official Notice.

Claims 13, 14, 17, 21, 30, 31, 37, and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bridges in view of Jiang in further view of Miller in further view of Holden. In light of the amendment, the Examiner’s rejections have become moot. Nonetheless, the following remarks regarding the Examiner’s rejections and the amended claims may be helpful to expedite prosecution.

In view of the above remarks, a specific discussion of the dependent claims is considered to be unnecessary. Therefore, Applicants’ silence regarding any dependent claim is not to be interpreted as agreement with, or acquiescence to, the rejection of such claim or as waiving any argument regarding that claim.

Holden is introduced to disclose the use of SIP to receive information, but Holden fails to disclose the use of SIP for receiving presence and location information of mobile devices. Holden discloses a system for obtaining announcement information and for interactive call sessions. Holden does not disclose any wireless components in its system, much less presence and location information of mobile devices. Examiner appears to be using hindsight to merely combine dissociated elements from references, without regard to the actual teachings of each reference.

Applicant, accordingly, respectfully requests withdrawal of the rejections of claims 13, 14, 17, 21, 30, 31, 37, and 47 over Bridges in view of Jiang in further view of Miller and in further view of Holden. In light of the amendment, the Examiner's rejections have become moot. Nonetheless, the following remarks regarding the Examiner's rejections and the amended claims may be helpful to expedite prosecution.

All other rejected claims have been canceled. These amendments do not reflect, and are not to be interpreted as, agreement or acquiescence by Applicants to the rejections or to the Examiner's reasons for the rejections.

For the foregoing reasons, the present application is believed to be in condition for allowance, and such action is earnestly requested.

If any additional fee is required, please charge Deposit Account No. 02-2666.

Respectfully submitted,
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Date:

8/8/05



Jordan M. Becker
Reg. No. 39,602

Customer No. 26529
12400 Wilshire Boulevard
Seventh Floor
Los Angeles, CA 90025-1030
(408) 720-8300